

B104 (FORM 104) (08/07)

EDVA

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)		
PLAINTIFFS ENNSTONE LITIGATION TRUST, by and through Lynn L. Tavenner, Trustee	DEFENDANTS Burch Materials Company, Inc. dba Burch Materials, Inc. and Burch Materials			
ATTORNEYS (Firm Name, Address, and Telephone No.) Stephen B. Gerald, Esquire Seven Saint Paul Street, Baltimore, Maryland 21202 410.347.8700	ATTORNEYS (If Known)			
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee			
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Complaint to recover preferences and/or fraudulent transfers. 11 U.S.C. Secs. 547, 548 and/or 550				
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; border: none;"> FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input checked="" type="checkbox"/> 12-Recovery of money/property - §547 preference <input checked="" type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div> </td> <td style="width: 50%; vertical-align: top; border: none;"> FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case) </td> </tr> </table>			FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input checked="" type="checkbox"/> 12-Recovery of money/property - §547 preference <input checked="" type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div>	FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
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<input type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23		
<input type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$ 6,279.90		
Other Relief Sought				

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BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Ennstone, Inc.		BANKRUPTCY CASE NO. 09-31204
DISTRICT IN WHICH CASE IS PENDING Eastern District of Virginia	DIVISION OFFICE Richmond	NAME OF JUDGE Tice
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/ Christopher A. Jones		
DATE February 23, 2011	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Christopher A. Jones	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, *unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

*Per LBR 7003-1, in the EDVA, a properly completed Adversary Proceeding Cover Sheet is required.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)**

In re:

ENNSTONE, INC., *et al.*,

Debtors.

Case No. 09-31204 (DOT)
Chapter 11
(Jointly Administered)

* * * * *

ENNSTONE LITIGATION TRUST,
by and through Lynn L. Tavenner, Trustee,

Plaintiff,

Adv. Pro. No. _____

v.

BURCH MATERIALS COMPANY, INC.
dba BURCH MATERIAS, INC. and
BURCH MATERIALS

Defendant.

* * * * *

**COMPLAINT TO AVOID PREFERENTIAL TRANSFERS AND FRAUDULENT
CONVEYANCES, TO RECOVER PROPERTY AND
FOR RELATED RELIEF**

Ennstone Litigation Trust established by the Second Amended Plan of Reorganization Dated February 15, 2010 in the bankruptcy cases of Ennstone, Inc., *et al.* (the "Litigation Trust"), by and through its trustee, Lynn L. Tavenner (the "Trustee"), by undersigned counsel, files this Complaint to Avoid Preferential Transfers and Fraudulent Conveyances, to Recover

WHITEFORD, TAYLOR & PRESTON, L.L.P.
Christopher A. Jones (VSB No. 40064)
3190 Fairview Park Drive, Suite 300
Falls Church, Virginia 22042
(703) 280-9260
(703) 280-9139 (facsimile)

Counsel to Ennstone Litigation Trust

Property and for Related Relief pursuant to 11 U.S.C. §§ 502, 544, 547, 548 and 550, and in support thereof states as follows:

JURISDICTION

1. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

2. Venue lies properly in this Court pursuant to 28 U.S.C. § 1409.

3. This matter is a core proceeding pursuant to 28 U.S.C. § 157.

PARTIES

4. The Litigation Trust is that certain trust created pursuant to the Second Amended Plan of Reorganization Dated February 15, 2010 (the “Plan”) of Ennstone, Inc., *et al.*, (collectively, the “Debtors”) and in which certain of the Debtors’ and/or Chapter 11 estates’ right, title and interest in certain assets, including this claim, vested pursuant to the Plan.

5. Burch Materials Company, Inc. dba Burch Materials, Inc. and Burch Materials (the “Defendant”) is an entity doing business in the United States and subject to service of process pursuant to Rule 7004 of the Federal Rules of Bankruptcy Procedure.

FACTUAL BACKGROUND

6. On February 24, 2009 (the “Petition Date”), the Debtors each filed with this Court a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. By Order dated February 27, 2009, the Debtors were consolidated for procedural purposes only and are jointly administered under the lead case of *In re Ennstone, Inc.* – Case No. 09-31204 (DOT).

7. On February 18, 2010, this Court entered an Order confirming the Debtors’ Plan. On March 1, 2010, the Debtors’ Plan became effective.

8. Pursuant to the Plan, the Litigation Trust was established to, among other things, liquidate and distribute certain assets of the Debtors' estates and prosecute certain litigation claims under Chapter 5 of the Bankruptcy Code. Pursuant to the Plan and the Litigation Trust Agreement, Lynn L. Tavenner was appointed the Trustee of the Litigation Trust and continues to serve in that capacity.

COUNT ONE
(To Avoid Preferential Transfers Pursuant to 11 U.S.C. § 547
and Recover Preferential Transfers Pursuant to 11 U.S.C. § 550)

9. The Litigation Trust adopts and incorporates by reference the allegations in Paragraphs 1 through 8 above as if fully set forth herein.

10. On or within ninety (90) days prior to the Petition Date (the "Preference Period"), one or more of the Debtors made one or more transfers by check, wire transfer, or their equivalent, of an interest of the Debtors' property in an amount not less than \$6,79.90 (the "Payments"), including but not limited to those transfers set forth on **Exhibit A** attached hereto.

11. During the 90-day period prior to the Petition Date, the Defendant received the Payments on account of debts owed by the Debtor making such Payments.

12. The Payments constituted transfers of an interest of a Debtor in property for or on account of an antecedent debt owed by such Debtor to the Defendant.

13. At the time of the Payments, the Debtor making the Payments was insolvent (as that term is defined and used in sections 101(32) and 547 of the Bankruptcy Code).

14. The Payments enabled the Defendant to receive more on account of its debt than the Defendant would have received if the Debtors' cases were under Chapter 7 of the Bankruptcy

Code, the Transfers had not been made, and the Defendant received payment of such debt to the extent provided by the provisions of the Bankruptcy Code.

15. The Payments constitute avoidable preferences under 11 U.S.C. § 547 and thus are recoverable from the Defendant pursuant to 11 U.S.C. § 550.

COUNT TWO
(To Avoid Fraudulent Transfers Pursuant to 11 U.S.C. § 548
and Recover Fraudulent Transfers Pursuant to 11 U.S.C. § 550)

16. The Litigation Trust adopts and incorporates by reference the allegations in Paragraphs 1 through 8 above as if fully set forth herein.

17. One or more of the Debtors made the Payments to the Defendant, which constituted a transfer of property of such Debtor to or for the Defendant's benefit.

18. To the extent that the Payments did not satisfy an antecedent debt of the Debtor payor, the Debtor making the Payments did not receive reasonably equivalent value in exchange for the Payments.

19. At the time of the Payments, the Debtor making the Payments was insolvent.

20. One or more of the Debtors' unsecured creditors was a creditor of the Debtors holding an allowed claim under § 502 of the Bankruptcy Code at the time of the Defendant's receipt of the Payments.

21. The Payments for which the Debtor payor did not receive reasonably equivalent value are avoidable fraudulent transfers ("Fraudulent Transfers") under section 548 of the Bankruptcy Code and recoverable from the Defendant pursuant to 11 U.S.C. § 550.

COUNT THREE
(To Disallow Claim Pursuant to 11 U.S.C. § 502(d))

22. Plaintiff incorporates by reference, as if fully stated herein, the preceding allegations in paragraphs 1 to 21 of the Complaint.

23. The Payments sought in the counts above are avoidable and recoverable as set forth therein pursuant to the applicable Bankruptcy Code sections alleged.

24. The Defendant has not paid the amount, or turned over the property sought to be avoided and recovered to the Trustee.

25. On or about April 10, 2009, the Debtors filed their Schedules of Assets and Liabilities (the "Schedules"), in which the Defendant was listed as having an unsecured non-priority claim in the amount of \$1,033.73 against the respective Debtors (the "Defendant's Claim").

26. Pursuant to 11 U.S.C. § 502(d), the Defendant's Claim should be disallowed.

WHEREFORE, the Litigation Trust respectfully requests:

(a) As to Count One, that the Court enter judgment against the Defendant (i) avoiding the Payments as preferential transfers pursuant to section 547 of the Bankruptcy Code; (ii) granting judgment against the Defendant pursuant to sections 547 and 550 of the Bankruptcy Code in the amount of the Payments, plus such other and further amounts as may be proven at trial, plus pre-judgment interest, costs and attorneys' fees; (iii) disallowing, in accordance with section 502(d) of the Bankruptcy Code, any claim against the Debtors and/or Debtors' estates held by the Defendant; and (iv) granting such other and further relief as is just and proper.

(b) As to Count Two, that the Court enter judgment against the Defendant (i) avoiding the Payments pursuant to section 548 of the Bankruptcy Code; (ii) granting judgment

against the Defendant pursuant to sections 548 and 550 of the Bankruptcy Code in the amount of the Payments, plus such other and further amounts as may be proven at trial, plus pre-judgment interest, costs and attorneys' fees; (iii) disallowing, in accordance with section 502(d) of the Bankruptcy Code, any claim against the Debtors and/or the Debtors' estates held by the Defendant; and (iv) granting such other and further relief as is just and proper.

Respectfully submitted,

ENNSTONE LITIGATION TRUST

/s/ Christopher A. Jones

WHITEFORD, TAYLOR & PRESTON L.L.P.

Christopher A. Jones (VSB No. 40064)

3190 Fairview Park Drive, Suite 300

Falls Church, Virginia 22042

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(703) 280-9139 (facsimile)

and

Stephen B. Gerald, Esquire

Seven Saint Paul Street

Baltimore, Maryland 21202

(410) 347-8700

(410) 223-4178 (facsimile)

Counsel to Ennstone Litigation Trust

EXHIBIT A

Check No.	Transaction Date	Defendant	Amount
113746	12/1/2008	Burch Materials, Inc.	4,750.78
113784	12/2/2008	Burch Materials, Inc.	1,529.12
		Total	6,279.90

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